No. 13,107

IN THE

United States Court of Appeals

For the Ninth Circuit

BRUCE G. BARBER, District Director, Immigration and Naturalization Service,

Appellant,

vs.

LOPE M. VARLETA,

Appellee.

BRIEF FOR APPELLEE.

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Subject Index

Table of Authorities Cited

Statutes

Texts

Other Authorities

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JURISDICTIONAL STATEMENT.

The plaintiff-appellee filed a Petition for a Writ of Habeas Corpus in the United States District Court for the Northern District of California, alleging that the petitioner had been denied due process of law within the meaning of the Fifth Amendment to the Constitution of the United States and denied equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States. Jurisdiction of the District Court to entertain the Petition for a Writ of Habeas Corpus is conferred by 28 U.S.C., Sections 451, 452 and 453.

The writ was granted by District Judge George B. Harris (T. 7 et seq.) and the defendant appealed (T. 15).

Jurisdiction of this Court to review the District Court's final decree granting a writ of habeas corpus is conferred by 28 U.S.C., Section 463.

STATEMENT OF THE CASE.

In accordance with the provisions of Rule 76, Federal Rules of Civil Procedure, Title 28, U.S.C.A., the appellant and appellee have stipulated to an agreed statement of the facts. That stipulation reads as follows:

> "It is hereby stipulated and agreed between the parties hereto, by their respective attorneys duly authorized, that the pertinent facts on appeal are as follows, and that this matter may be submitted to the United States Court of Appeals for the Ninth Circuit under Rule 76 of the Federal Rules of Civil Procedure, and that this statement shall constitute the designated record on appeal and the points to be relied upon:
>
> Plaintiff was born at Pandan Antique, Philippine Islands, on September 25, 1914, and was admitted to the Hawaiian Islands for permanent residence in the year 1931 as a National of the United States. He arrived in the Continental United States March 22, 1935 and was excluded from admission to the United States on March 27, 1935 by a Board of Special Inquiry, as a stowaway (39 Stat. 887, 8 USC 153). Plaintiff was placed

aboard a steamship for deportation to the Hawaiian Islands but escaped from the vessel on April 6, 1935, and made his way into the Continental United States where he has resided since that date. The plaintiff has been physically present in the United States since April 6, 1935 except for his temporary absences in pursuit of his calling as a seaman aboard American vessels. The plaintiff last entered the United States from a foreign port on November 22, 1947 at Norfolk, Virginia, seeking admission as a resident alien seaman returning to the United States. On September 29, 1950, plaintiff was accorded a deportation hearing by a Hearing Examiner for the Immigration and Naturalization Service, and on November 29, 1950, a warrant for his deportation was issued charging that at the time of his last entry at Norfolk, Virginia, November 22, 1947, that the plaintiff was not in possession of a valid Immigration Visa and was not exempted from the presentation thereof.

While in custody of the Immigration and Naturalization Service pending his deportation from the United States, plaintiff personally filed on January 9, 1951, a Petition for Writ of Habeas Corpus, and an Order to Show Cause was filed returnable on January 3, 1951. A continuance was granted and a Return to Order to Show Cause and a Memorandum of Points and Authorities were filed in the United States District Court, San Francisco, California on February 6, 1951. Points and Authorities were also filed by Counsel for plaintiff on that date, and on February 7, 1951, the matter was argued before the Honorable George B. Harris, United States District Court

Judge in the United States District Court, San Francisco, California, and submitted."

CONTENTIONS OF THE APPELLANT.

The Appellant contends that the decision of the District Court is in error for the following reasons:

(1) That the Court erred in finding that Section 8(a)(2) of the Philippine Independence Act of 1934 is no longer effective.

(2) The Court erred in finding that the plaintiff is a lawful permanent resident of the United States.

(3) The Court erred in finding that the deportation order of the Immigration and Naturalization Service, ordering the plaintiff's return to the Philippine Islands was erroneous.

ARGUMENT.

I.

THE PROVISIONS OF THE PHILIPPINE INDEPENDENCE ACT OF 1934 BECAME OBSOLETE BY PRESIDENTIAL PROCLAMATION NO. 2695 ON JULY 4, 1946.

By the Treaty of Paris, December 10, 1898, 30 Stat. 1754, the archipelago known as the Philippine Islands was ceded to the United States. Provisions of this treaty (Article IX) provided that the then Spanish subjects who were residing in the Islands could make an election of citizenship and that the "civil rights and political status of the native inhabitants of the

territories ceded to the United States shall be determined by the Congress."

By Section 4 of the Act of July 1, 1902, 32 Stat. 692, it was provided that children born subsequent thereto shall be deemed citizens of the Philippine Islands and as such entitled to the protection of the United States. The Act of March 23, 1912, 37 Stat. 77, amended this section by adding thereto the proviso: "That the Philippine Legislature is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions * * *."

The foregoing section was reenacted without substantial change as Section 2 of the Act of August 29, 1916, 39 Stat. 546, 48 U.S.C.A. 1002. Under the authority granted it the Philippine Legislature, on March 26, 1920, enacted what is known as the Philippine Naturalization Law.

This petitioner was born in the Philippine Islands on September 25, 1914. By reason of such birth and the provisions of the Statutes then in effect, the appellee acquired Philippine citizenship at birth. Also, as a result of his birth in the Philippine Islands at that time, the appellee became a national of the United States.

The Nationality Act of 1940 defines the phrase "national of the United States" as meaning "(1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes per-

manent allegiance to the United States. It does not include an alien." 8 U.S.C.A. 501(b).

The Supreme Court of the Philippines has held that birth in the Philippine Islands since the date of their annexation to the United States conferred Philippine citizenship. *Haw v. Collector of Customs,* No. 40,895, Official Gazette, Vol. 32, No. 68, p. 1310, and *Go Julian v. Government of the Philippine Islands,* 45 Phil. 289.

Citizens of the Philippine Islands are not aliens. *Gonzales v. Williams,* 192 U.S. 13, 24 S. Ct. 177, 48 L. Ed. 317. They owe no allegiance to a foreign government, but do owe allegiance to the United States. *Toyata v. United States,* 69 L. Ed. 1016, 268 U.S. 402, 45 S. Ct. 563.

The order of the Commissioner, Immigration and Naturalization Service, states the appellee "is a native and citizen of the Commonwealth of the Philippines." It is undisputed. However, at the time of his admission to Hawaii in 1931, he was a national of the United States. He still had this status upon his entry into the continental United States in March of 1935. *Application of Viloria,* 84 F. Supp. 584, 585; *Cabebe v. Acheson,* 183 F. (2d) 795.

The Philippine Independence Act, which was approved on March 24, 1934, 48 Stat. 456, contains the following provisions with reference to the status of citizens of the Philippine Islands:

> "Section 2(a). The constitution formulated and drafted shall * * * contain provisions to the effect that, pending the final and complete with-

drawal of the sovereignty of the United States over the Philippine Islands * * *

(1) All citizens of the Philippine Islands shall owe allegiance to the United States."

The Constitution of the Philippines, adopted February 8, 1935, and approved by the President of the United States by Proclamation on March 23, 1935, provided in an Ordinance annexed thereto, as follows:

"Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—(1) All citizens of the Philippines shall owe allegiance to the United States." 30 Philippine Public Laws, p. 386.

Generally speaking, nationals of the United States who are not citizens may enter other American territory without regard to the immigration laws. A citizen of the Philippine Islands who was admitted to the United States, including Hawaii, prior to the effective date of the Philippine Independence Act, was admitted for permanent residence. *Board of Immigration Appeals,* files 56040/990, September 26, 1940 and 56068/25, January 6, 1941.

It has been stipulated that the appellee is a lawful resident-alien of the Hawaiian Islands by reason of his admission to that Territory prior to the Philippine Independence Act of 1934. The appellee has resided continuously in the continental United States and the Territory of Hawaii since the time of his original admission for permanent residence in 1931. His only

absences have been as a seaman (1936 to 1947) in pursuit of his calling attached to American-owned vessels.

The Philippine Independence Act provided in part that:

> "Governmental Relations, Immigration, Continuation of Privileges. Sec. 8(a). Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—
>
> "(1) For the purpose of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13(c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. * * *
>
> "(2) Citizens of the Philippine Islands who are not citizens of the United States shall not be admitted to the continental United States from the Territory of Hawaii (whether entering such territory before or after the effective date of this section) unless they belong to a class declared to be nonimmigrants by section 3 of the Immigration Act of 1924 or to a class declared to be nonquota immigrants under the provisions of section 4 of such Act other than subdivision (c) thereof, or unless they were admitted to such territory under an immigration visa. * * *
>
> "(3) Any foreign Service Officer may be assigned to duty in the Philippine Islands, under a commission as a consular officer, * * *

"(4) For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country.

"(b) The provisions of this section are in addition to the provisions of the immigration laws in force, and shall be enforced as part of such laws, and all of the penal or other provisions of such laws not inapplicable, shall apply to and be enforced in connection with the provisions of this section. An alien, although admissible under the provisions of this Section, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this section, and an alien, although admissible under the provisions of the immigration laws other than this section, shall not be admitted to the United States if he is excluded by any provisions of this section.

(c) Terms defined in the Immigration Act of 1924 shall, when used in this section, have the meaning assigned to such terms in that Act." 48 U.S.C.A. 1238.

"Immigration After Independence. Section 14. Upon final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all provisions thereto relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries." 48 U.S.C.A. 1244.

The President of the United States, by Proclamation 2695, dated July 4, 1946, 60 Stat. 1352, 11 F.R. 7517, proclaimed:

> "The United States of America hereby withdraws and surrenders all right of possession, supervision, jurisdiction, control, or sovereignty now existing and exercised by the United States of America in and over the territory and people of the Philippines; and
>
> "On behalf of the United States of America, I do hereby recognize the independence of the Philippines as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution now in force."

The provisions of Section 8 of the 1934 Act regulated the immigration of these persons to the United States from foreign countries until July 4, 1946, when the Philippine Islands became an independent nation. At that time Section 14 of the same Act became effective. That section provides that after independence, the immigration laws of the United States shall apply to persons of this category *to the same extent as in the case of citizens of other foreign countries.*

Between the effective date of the Philippine Independence Act and July 4, 1946, Philippine citizens who had been admitted only to Hawaii were subject to the provisions of 8(a)(2) of the Act of 1934.

The query is, What is their status subsequent to July 4, 1946?

We are here concerned with the meaning of that part of Section 14 which says that, after independence, the immigration laws of the United States shall apply to persons born in the Philippine Islands "to the same extent as in the case of other foreign countries." A reasonable construction to place on this phrase is that after July 4, 1946, any person born in the Philippine Islands, regardless of his whereabouts, has the same status as any other alien. To arrive at any other construction would result in ambiguity.

Aliens arriving from foreign countries, including Filipinos, are today admitted at Hawaii to the United States for permanent residence. 8 C.F.R. 116. To arrive at a different determination would mean that those Philippine citizens who were admitted to Hawaii prior to July 4, 1946, are to be singled out and their movements restricted by an act which is now obsolete. See 48 U.S.C.A. 1238.

Any alien when effecting intra-insular travel or travel to the continental United States is exempt from exclusion on documentary grounds. A resident of an insular possession, such as Hawaii, can travel freely to the United States without obtaining any visa as required by the 1924 Act.

The Immigration and Naturalization Service admits that subparagraphs (1), (3) and (4) of Section 8 became ineffective on July 4, 1946. There is no basis for determining that subparagraph (2) remained in

full force and effect subsequent to the transition period. It is contended that Section 14 vitiated the Act in its entirety upon fulfillment of the conditions prescribed therein.

The Philippine Independence Act declared that upon final and complete withdrawal of American sovereignty over the Philippine Islands that the provisions of that Act which related to immigration would become obsolete and that the immigration laws then existing would apply "to the same extent as in the case of other foreign countries." The restrictions imposed by the Independence Act limited the migration of United States nationals, who are not subject to our immigration laws, during the transition period. In other words, as a price of eventual liberty, United States nationals of Philippine ancestry, were by this specific legislation, to be considered as aliens during the transition period for immigration purposes. Naturally, upon the complete and final withdrawal of American sovereignty the Philippine Islands became a separate and distinct nation. The citizens of that nation were to be granted the benefits of our laws to the same extent as in the case of citizens of any other foreign country.

It is interesting to note that Part 172, Title 8, Code of Federal Regulations, which dealt with the immigration, exclusion, and deportation of certain Filipinos of this category, was revoked in its entirety, effective July 4, 1946. 11 F.R. 7127.

Prior to July 2, 1946, Filipinos (except for a small class that does not have to be discussed here) were

not eligible for naturalization as citizens of the United States. The Act of July 2, 1946 provided that: "The right to become a naturalized citizen under the provisions of this Act shall extend only to * * * Filipino persons or persons of Filipino descent," 8 U.S.C.A. 703(a), and "Certificates of arrival or declaration of intention shall not be required of Filipino persons or persons of Filipino descent who are citizens of the Commonwealth of the Philippines on the date of the enactment of this section, and who entered the United States prior to May 1, 1934, and have since continuously resided in the United States."

Section 101(d) of the Nationality Act of 1940, 8 U.S.C.A. 501, defined the term "United States" as the "Continental United States, Alaska, Hawaii, * * *."

It must be assumed that the appellee, if otherwise qualified, is eligible for naturalization. *Cabebe v. Acheson, supra.* District Courts have admitted to United States citizenship Philippine citizens who were admitted to Hawaii prior to May 1, 1934, and who have arrived in the United States subsequent to that date without being in possession of a valid immigration visa.

Stated in another way, Filipinos whose cases were, so far as dates of entry into Hawaii and the United States are concerned, on all fours with that of the petitioner, have been admitted to United States citizenship in the District Court. This fact is incongruous

with the appellant's position that this petitioner must under his interpretation of the law be deported to the Republic of the Philippines.

Petition of Mary Almarza Bernal, No. 245-P-88505;

Petition of Eusibio Aquino Hafalla, No. 245-P-84671.

The Immigration and Naturalization Service in both of these cases presented the facts to the court with a favorable recommendation that citizenship be granted. If a person has an admission to the United States which is valid for naturalization, which is a privilege and not a right, he must also have a valid admission to the United States for immigration purposes.

Where the language of a statute is plain and unambiguous, there is no occasion for construction even though other meanings may be found; and the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the minds of the legislature, but the statute must be given effect according to its plain and obvious meaning.

U. S. v. Missouri Pac. Ry. Co., 49 S. Ct. 133, 278 U.S. 269;

Commissioner of Immigration v. Gottlieb, 265 U.S. 310, 44 S. Ct. 258;

U. S. v. Standard Brewery, 40 S. Ct. 139, 251 U.S. 210;

Lake County v. Rollins, 9 S. Ct. 651, 130 U.S. 662;

59 C.J. 593.

The cases relied upon by the appellant are not applicable to this case. In the first place, there was no repeal of Section 8(a)(2) by implication. The appellant conceded that the language of Section 14 of the same Act was sufficiently clear to effect a repeal of Sections 8(a)(1), 8(a)(3) and 8(a)(4). It is difficult to see how the appellant distinguishes the effect of Section 14 upon one subparagraph from the rest of the Act, and in particular one subparagraph from another subparagraph of the same section. It certainly is a well recognized canon of statutory construction that subsequent legislation will not effect a repeal of a prior enactment unless such repeal has been expressly provided. However, in this instance, we are not confronted with two separate and distinct Acts which are irreconcilable and subject to judicial construction. In this particular case, we are dealing with two sections of the same Act, and naturally, as part of the same Act, each is entitled to equal weight and should be interpreted to make them consistent and harmonious if at all possible.

The language used in Section 14 of the Philippine Independence Act is clear and unambiguous. Upon a final withdrawal of American sovereignty over the Philippine Islands, the citizens of the Philippine Islands who had been previously nationals of the United States were to be extended the same benefits under the immigration laws as that applicable to citizens of other nations. In accordance with the provisions of Section 14, Section 8(a)(2) was superseded by the general immigration statutes and re-

strictions on the appellee's residence were removed when Section 8(a)(2) became ineffective, and his status is to be determined from the law applicable to other aliens.

II.

EFFECTIVE DATE OF THE PHILIPPINE IMMIGRATION ACT OF 1934.

The appellee agrees with the District Court's conclusion that the effective date of the Philippine Independence Act is immaterial in determining this appellee's present status. However, in view of the appellant's discussion of this matter, a short argument showing the inconsistencies of prior judicial interpretations follows:

The Philippine Immigration Act was approved on March 24, 1934. The Constitution of the Philippines was adopted on February 8, 1935, and approved by the President of the United States by Proclamation on March 23, 1935. Proclamation No. 2148 dated November 14, 1935, 49 Stat. 3481, announced the result of election of officers in the Philippines and proclaimed termination of the then existing government.

The Court of Appeals for the Ninth Circuit stated in the case of *Del Guercio v. Gabot,* 161 F. (2d) 559, at page 560:

> "The Independence Act (48 U.S.C.A. 1231), although it became a law of the United States in March 1934 was by its terms not to be effective

until the Philippine people accepted it. Formal acceptance became effective May 14, 1935."

The same court expressed a different view in the case of *Cabebe v. Acheson,* 183 F. (2d) 795, at page 799:

"As of the date of acceptance (which occurred in fact on May 1, 1934), it was provided in Section 8(a)(1) of the Act * * *."

November 15, 1935, the date of Proclamation 2148, supra, has been held to be the effective date of the Act of March 24, 1934. The court stated:

"The Secretary of War is the officer who now deals with the affairs of the Philippine Commonwealth so far as the United States is concerned therewith, and, prior to the effective date of the Independence Act, November 15, 1935, his predecessors were in charge of affairs of the Philippine Government for upwards of a generation." *Bradford v. Chase Nat. Bank of City of New York,* 24 F. Supp. 28, 37, affirmed 105 F. 2d 1001, affirmed 60 S. Ct. 707, 84 L. Ed. 990.

The Department of State and the Immigration and Naturalization Service have consistently held that the effective date of said Act is May 1, 1934. *Hackworth, Digest of International Law,* Vol. 1, p. 496.

The Constitution of the Philippines, adopted February 8, 1935, and approved by the President of the United States by proclamation on March 23, 1935, has been referred to as the effective date of the Philippine Independence Act. See *Cincinnati Soap Co. v. United States,* 81 L. Ed. 1122, 1131, 301 U.S. 308, 319.

The Philippine Independence Act of 1934 further declared that on July 4th next following the expiration of a period of ten years from the date of the inauguration of the new government under such constitution, the President of the United States would proclaim the complete independence of the Philippine Islands and the people thereof.

Section 3 of the Act of June 29, 1944, ch. 322, 58 Stat. 625, provided in part that the date of independence could be advanced prior to July 4, 1946, but this was not done.

It should be noted that Congress and the President of the United States both recognized that the ten-year period specified in the Act of 1934 elapsed on *July 4, 1946.*

III.

THE APPELLEE IS A PERMANENT RESIDENT OF THE UNITED STATES NOT DEPORTABLE ON THE CHARGES CONTAINED IN THE APPELLANT'S WARRANT OF DEPORTATION.

The appellee enjoyed the status of a national of the United States until July 4, 1946. Not until that date, when the Philippine Islands were granted their independence, did the appellee become an alien.

The change of such status, however, did not deprive the appellee of his lawful residence in the Hawaiian Islands. As a permanent resident-alien of Hawaii, which the appellant concedes, on and after July 4, 1946 the appellee was authorized to enter the United

States without having in his possession an immigration visa.

The Hawaiian Islands became a possession and organized territory of the United States by annexation under the provisions of a joint resolution adopted by the Congress of the United States on July 7, 1898 (48 U.S.C. 499). Section 3 of the Immigration Act of 1924, 8 U.S.C.A. 203, defines an immigrant as "any alien departing from any place outside the United States destined for the United States." Section 28(a) of the same act, 8 U.S.C.A. 224(a), defines the United States as follows:

> "The term 'United States' when used in a geographical sense, means the states, the Territories of Hawaii and Alaska * * *."

It is a well settled fact that aliens of other countries who have been admitted to the territory of Hawaii for permanent residence are likewise lawfully admitted to the continental United States for permanent residence. There is no reason why this appellee should be considered in any different category.

The appellee is charged with violation of the Immigration Act of 1924. It is specifically charged that the appellee is an immigrant not in possession of valid immigration visa, Section 13 of the Immigration Act of 1924, 8 U.S.C.A. 213. This Section provides:

> "Sec. 13 (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa * * *.

> (b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa."

The provisions of the Immigration Act of February 5, 1917, as quoted by the appellant on page 20, are not applicable to the facts in the instant case. The Act of 1917 is qualitative in scope and the appellee has not been charged with violation of any of the provisions contained therein.

There is no doubt that after the appellee's departure from the United States as a seaman his subsequent return to the United States from a foreign port, constitutes a new entry into the United States within the intent and meaning of the Immigration laws.

However, upon his return to the United States from foreign, as a seaman in 1947, the appellee was entitled to the benefits of 8 C.F.R. 175.45(b) if he was at that time a lawful permanent resident of the United States. Part 175.45 of the Code of Federal Regulations, Title 8, provides:

> "Immigrants required to present passports but not permits to enter. Aliens who are lawful permanent residents of the United States, and who fall within the following categories are exempt from the requirements of presenting permits to

enter, inasmuch as the requirement thereof is waived, but must present passports:

(b) An Alien occupationally a seaman, who is returning in accordance with the terms of the articles of outward voyage, * * *."

Part 175.41(k), Title 8, Code of Federal Regulations, defines a seaman as "any alien whose occupation or calling as such is bona fide, and who is employed in any capacity on board any vessel arriving in the United States from any place outside of the United States."

In accordance with the definition of the Immigration Act of 1924, this appellee has resided continuously in the United States since the time of his original admission for permanent residence in 1931. His continuous service in pursuit of his calling as a seaman for approximately twelve years aboard American-owned vessels with home ports in the United States certainly is no indication of abandonment of residence therein. As a lawfully admitted permanent resident of the Territory of Hawaii, unless otherwise restricted by the provisions of Section 8(a)(2) of the Philippine Independence Act, the appellee must also be considered as a legal permanent resident of the continental United States in accordance with the provisions of the definition contained in the Immigration Act of 1924.

As specifically provided in Section 14 of the Philippine Independence Act, upon the granting of independence on July 4, 1946, he is entitled to the benefits

of the immigration laws of the United States to the same extent as a citizen of any other country.

There is nothing in any of the statutory immigration laws, or the regulations adopted thereunder, which specifically provides that a person of the Filipino race should be considered in a different category than that applicable to any other alien. Like any other alien, this appellee was not required to present any document upon his return at the port of Norfolk, Virginia in 1947.

Inasmuch as the appellee was entitled to the benefits of 8 C.F.R. 175.45 upon the occasion of his last entry to the United States, the charges contained in the Immigration Warrant of Arrest and the Warrant of Deportation can not be sustained.

The ruling of the Immigration and Naturalization Service ordering his deportation to the Philippine Islands is erroneous as a matter of law, and constitutes a denial of due process of law contrary to the Fifth Amendment to the Constitution of the United States. *Kessler v. Strecker,* 307 U.S. 22, 83 L. Ed. 1082.

In addition to the case cited in the argument, attention of the court is respectfully invited to the following cases which deal with the status of Philippine citizens:

U. S. v. Gancy, 54 F. Supp. 755, affirmed 149 F. (2d) 788, certiorari denied 66 S. Ct. 299, 90 L. Ed. 463;

Suspine et al. v. Compania Translatlantica Centroamericana, 37 F. Supp. 263;
Rogue Espiritu De La Ysla v. United States, 37 F. Supp. 263;
Alfara v. Fross, 26 C. (2d) 358;
People v. Cordero, 50 C.A. (2d) 146;
DeCano v. State, 7 Wash. (2d) 613.

CONCLUSION.

It is respectfully submitted that the provisions of Section 8(a)(2) of the Philippine Independence Act of 1934 became obsolete upon granting a complete sovereignty to the Philippine Islands on July 4, 1946; that this appellee at the time of his last arrival in 1947 was a lawful permanent resident of the United States and as such entitled to the benefits of the general waiver of visa requirements provided for alien seamen.

Wherefore, it is submitted that the decision of the District Court be affirmed.

Dated, San Francisco, California,
December 19, 1951.

Respectfully submitted,
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